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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JOSEPH LOCHUCH EWALAN,

CASE NO. C20-5678JLR

11 Plaintiff,

ORDER

12 v.

13 WASHINGTON STATE  
14 DEPARTMENT OF  
CORRECTIONS, et al.,

15 Defendants.

16 Before the court is *pro se* Plaintiff Joseph Ewalan's motion for reconsideration of  
17 the court's October 4, 2023 order denying Mr. Ewalan's motion for an order directing the  
18 Washington State Department of Corrections ("DOC") to transport Mr. Ewalan to Seattle  
19 for trial. (Mot. (Dkt. # 160); *see also* 10/4/23 Order (Dkt. # 159); Transp. Mot. (Dkt.

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1 # 148).)<sup>1</sup> Having reviewed the motion, the relevant portions of the record, and the  
 2 governing law, the court DENIES Mr. Ewalan's motion for reconsideration.

3 "Motions for reconsideration are disfavored," and the court "will ordinarily deny  
 4 such motions in the absence of a showing of manifest error in the prior ruling or a  
 5 showing of new facts or legal authority which could not have been brought to its attention  
 6 earlier with reasonable diligence." Local Rules W.D. Wash. LCR 7(h)(1).

7 "Reconsideration is an extraordinary remedy," and the moving party bears a "heavy  
 8 burden." *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). The  
 9 court concludes that Mr. Ewalan has not met his burden to demonstrate that the court's  
 10 prior order should be reconsidered.

11 Mr. Ewalan seeks reconsideration based on the factors set forth in *Wiggins v.*  
 12 *Alameda County*, 717 F.2d 466 (9th Cir. 1983). (*See generally* Mot.) Under *Wiggins*, a  
 13 district court considering whether to issue a writ of *habeas corpus ad testificandum* must  
 14 consider: (1) "whether the prisoner's presence will substantially further the resolution of  
 15 the case"; (2) "the security risks presented by the prisoner's presence"; (3) "the expense  
 16 of the prisoner's transportation and safekeeping"; and (4) "whether the suit can be stayed  
 17 until the prisoner is released without prejudice to the cause asserted." *Wiggins*, 717 F.2d  
 18 at 468 n.1. In particular, Mr. Ewalan argues his physical presence will substantially  
 19 further resolution of the case based on the value of "live testimony" and appearing "face  
 20 [to] face" with witnesses and the jury. (Mot. at 4.) Mr. Ewalan argues that the modest

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 22 <sup>1</sup> The court construed Mr. Ewalan's motion for an order of transport as one seeking a  
 writ of *habeas corpus ad testificandum*. (10/4/23 Order at 3.)

1 expenses associated with his transport and housing do not outweigh his low security risk.  
2 (*Id.* at 3-4.) Mr. Ewalan also argues the court could stay this case until his release from  
3 prison without prejudice to the defendants, which would allow more time for Defendant  
4 Russell Dickerson to appear and actively participate in the litigation. (*Id.* at 7-9; *see also*  
5 *id.* at 7, 11-12 (suggesting that Mr. Ewalan's release from prison is imminent based on  
6 Mr. Ewalan's pending collateral attack on his conviction in state court).) Finally, Mr.  
7 Ewalan raises concerns that he will suffer prejudice if required to conduct trial remotely  
8 while incarcerated and acting *pro se*. (*See* Mot. at 6 (arguing that appearing by  
9 videoconference from prison will create a negative impression on the jury).)

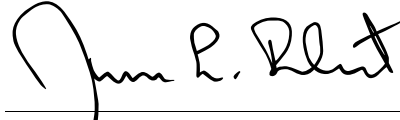
10       However, Mr. Ewalan identifies neither manifest error in the court's prior order,  
11 nor facts or legal authority which could not have been brought to the court's attention  
12 earlier with reasonable diligence. Local Rules W.D. Wash. LCR 7(h)(1). The court  
13 carefully weighed the *Wiggins* factors and concluded that Mr. Ewalan's request for a writ  
14 of *habeas corpus ad testificandum* should be denied. (10/4/23 Order at 3-5.) Mr.  
15 Ewalan's disagreement with the court's analysis is not a basis for reconsideration.  
16 Moreover, Mr. Ewalan's concerns related to prejudice do not warrant reconsideration  
17 because they may be addressed through jury instructions and motions in limine. *See*  
18 *Thompson v. Hicks*, No. C08-1065-JCC, 2012 WL 12874936, at \*1 (W.D. Wash. Sept. 9,  
19 2012) (declining to order new trial based on alleged prejudice where incarcerated *pro se*  
20 plaintiff conducted trial by videoconference in § 1983 action).

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1 For these reasons, the court DENIES Mr. Ewalan's motion for reconsideration  
2 (Dkt. # 160.)

3 Dated this 11th day of October.

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5 JAMES L. ROBART  
6 United States District Judge  
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